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COUNTY OF SONOMA
(erroneously sued as "Sonoma County Sheriffs
Department, the Sonoma County Board of Supervisors,
the Sonoma County District Attorney's Office")

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BRIAN BEST,

Case No. CV-19-2252-YGR

Plaintiff,

VS.

JOHN DOE (SHERIFF'S DEPUTY),
THE SONOMA COUNTY SHERIFF'S
DEPARTMENT, THE SONOMA
COUNTY BOARD OF SUPERVISORS,
THE SONOMA COUNTY DISTRICT
ATTORNEY'S OFFICE

**DEFENDANT COUNTY OF SONOMA'S
REQUEST FOR JUDICIAL NOTICE IN
SUPPORT OF DEFENDANT'S MOTION
TO DISMISS, OR, IN THE ALTERNATIVE,
MOTION FOR A MORE DEFINITE
STATEMENT**

Date: October 15, 2019

Date: October 1
Time: 2:00 p.m.

Courtroom: 1, 4th Floor

Judge: Hon. Yvonne Gonzalez Rogers

Defendants.

Federal Rule of Evidence 201 provides that a court, in its discretion, may take judicial notice of facts not subject to reasonable dispute that are either “(1) within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” *See Fed. R. Evid. 201(b).*

Defendant COUNTY OF SONOMA respectfully requests that the Court take judicial notice of the existence and contents of **Exhibit A**, attached hereto, which is a true and correct copy of the Plaintiff BRIAN BEST's Request for Permission to File the Government Claim Late

1 received by the County of Sonoma on October 17, 2018, and an accompanying Tort Claim
 2 against the County of Sonoma under California Government Code §910. The attached copy of
 3 the mailing envelope attests that the documents were sent by mail on October 15, 2018. On the
 4 first page of the Claim against the County of Sonoma (section 6), Plaintiff identifies that the
 5 incident occurred on April 24, 2017.

6 Defendant COUNTY OF SONOMA respectfully also requests that the Court take judicial
 7 notice of the existence and contents of **Exhibit B**, attached hereto, which is a true and correct
 8 copy of the Notice of Return of Untimely Claim and accompanying Proof of Service, which was
 9 sent to Plaintiff Brian Best on October 31, 2018 and notified Plaintiff that his claim was untimely
 10 pursuant to Government Code Sections 901 and 911.2.

11 Pursuant to Rule 201, a court may take judicial notice of public records, including the
 12 filing date and contents of Plaintiff's Request for Late Claim Filing and Claim against the
 13 County of Sonoma. See *Shaw v. City of Porterville*, 2015 WL 3795026, 2015 U.S. Dist. LEXIS
 14 78672 at *8-9 (E.D. Cal. June 17, 2015) (court may take judicial notice of tort claim and notice
 15 of insufficiency of claim, where authenticity undisputed, essential to plaintiff's claims, and no
 16 opposition); *Clarke v. Upton*, 703 F.Supp.2d 1037, 1042 (E.D. Cal. 2010) (taking judicial notice
 17 of tort claim and rejection of claim); see also e.g., *Gong v. City of Rosemond*, 226 Cal.App.4th
 18 363, 376 (2014) (under California law, "If a plaintiff alleges compliance with the claims
 19 presentation requirement, but the public records do not reflect compliance, the governmental
 20 entity can request the court to take judicial notice ... that the entity's records do not show
 21 compliance.").

22 It is proper for the Court to take judicial notice of the tort claim and its contents to
 23 prevent Plaintiff from evading a Rule 12(b)(6) motion which, had the Complaint been properly
 24 plead, would have been granted. See *Swartz v. KPMG LLP*, 476 F.3d 756, 763 (9th Cir. 2007)
 25 (court may consider document if authenticity not questioned in order to prevent plaintiff from
 26 prevailing on Rule 12(b)(6) motion by omitting documents underlying a claim).

27 The existence and contents of plaintiff's government tort claim, attached as Exhibit A,
 28 and the County's response, attached as Exhibit B, are not subject to reasonable dispute and are

